

1 Christopher B. Ghio (State Bar No. 259094)  
Christopher Celentino (State Bar No. 131688)  
2 Yosina M. Lissebeck (State Bar No. 201654)  
**DINSMORE & SHOHL LLP**  
3 655 West Broadway, Suite 800  
San Diego, CA 92101  
4 Telephone: 619.400.0500  
Facsimile: 619.400.0501  
5 christopher.ghio@dinsmore.com  
christopher.celentino@dinsmore.com  
6 yosina.lissebeck@dinsmore.com

7 Special Counsel to Richard A. Marshack, Chapter 11 Trustee

8  
9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**  
11

12 In re:  
13 THE LITIGATION PRACTICE GROUP P.C.,  
14 Debtor.

Case No.: 8:23-bk-10571-SC

Chapter 11

**DECLARATION OF PETER W. BOWIE  
IN SUPPORT OF MOTION OF TRUSTEE  
RICHARD A. MARSHACK FOR ENTRY  
OF AN ORDER (A) APPROVING SALE  
OF ASSETS FREE AND CLEAR OF ALL  
LIENS, CLAIMS, ENCUMBRANCES AND  
INTERESTS PURSUANT TO 11 U.S.C.  
§ 363(b) AND (B) APPROVING  
ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES AND OTHER  
AGREEMENTS**

Date: July 21, 2023  
Time: 10:00 a.m.  
Judge: Hon. Scott C. Clarkson  
Place: Courtroom 5C  
411 W. Fourth Street  
Santa Ana, CA 92701

1 I, Peter W. Bowie, declare that the following is true and correct, under penalty of perjury:

2 1. Our firm is Special Counsel for Richard M. Marshack, Chapter 11 Trustee in the above  
3 captioned case and I make this Declaration based on personal knowledge. I am a Partner/Of Counsel  
4 to the firm, and make this Declaration in that capacity and no other.

5 2. I make this Declaration in support of *Motion of Trustee Richard A. Marshack for Entry*  
6 *of an Order (A) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and*  
7 *Interests Pursuant to 11 U.S.C. § 363(b) and (B) Approving Assumption and Assignment of Certain*  
8 *Executory Contracts and Unexpired Leases and Other Agreements.*

9 3. I have read and reviewed the following documents in this case: 1) the Chapter 11  
10 Trustees Sale Motion; 2) the United States Trustee's Motion to Convert or Dismiss; 3) the Court's  
11 Order Requesting Additional Briefing; 4) the Pocket Brief of the Chapter 11 Trustee; and 5) the  
12 Pocket Brief of the United States Trustee.

13 4. I understand the Court's concern, set forth in its Order Requesting Additional Briefing,  
14 about appearing to be complicit in the sale of a business that would permit the continuance of "illegal"  
15 operations by a successor. I have no knowledge or opinion about how the Debtor operated its business,  
16 or what illegal acts, if any, occurred at any point in time -- I have not been made privy to the other  
17 pleadings or factual assertions involved in the case, and as I understand it, am accepting without  
18 admission that the debtor's provision of legal services to its clients was not in compliance with  
19 applicable law. Based upon my review of the documents set forth in paragraph 3, I make the following  
20 observations in support of the Trustee's Sale Motion:

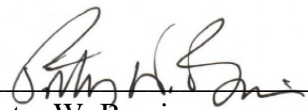
21 a. The Trustee's and the Committee's position that an offensive provision of an executory  
22 contract, even an illegally offensive position, can generally be severed or excised from the contract  
23 should be applicable here. The Trustee and the Committee, in conjunction with the proposed Buyer  
24 and any overbidders, propose to cure offensive provisions with a comprehensive new Legal Services  
25 Agreement which will address not just alleged illegal terms of the Debtor's agreements, but  
26 obligatorily will comport with applicable California law. Approving such reformation by way of  
27 severance and cure of the offending contract, among others is an everyday occurrence in Bankruptcy

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1 Court, and is exactly the type of task often utilized by the Court in the exercise of its jurisdiction  
2 under 11 U.S.C. section 105(a).

3 b. Once the Legal Services Agreement is conformed to applicable law and satisfies the  
4 Court, it seems to follow that the Trustee ought to be able to sell assets of the estate, so long as the  
5 asset itself (a contract to provide legal services) and the substance of the contract (provision of legal  
6 services) are not illicit on their face. This is not the equivalent to the sale of an illegal contract (such  
7 as a contract to commit a murder): it is impossible to contemplate that the sale of the executory  
8 contract, once severed and cured, cannot be monetized. In this case, however, the Trustee's proposed  
9 sale agreement does more to protect the consumer client: in addition to the appropriate modifications  
10 and constraints in place to clean up the assets, it requires the Buyer in most instances to comply with  
11 the statutes that the OUST believes govern (even though the Trustee, the OCC and the proposed buyer  
12 have briefed the inapplicability of those statutes). And, going one step further, the Trustee's proposed  
13 transaction has the proposed buyer's consent to the Court's appointment of a Monitor to audit and test  
14 the buyer's compliance with the revised legal services agreement and the aforementioned statutes.

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct and that this declaration was executed on July 20, 2023 at San Diego,  
17 California.

18   
19 \_\_\_\_\_  
20 Peter W. Bowie  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 655 W. Broadway, Suite 800, San Diego, California 92101

A true and correct copy of the foregoing document entitled (*specify*):

**DECLARATION OF PETER W. BOWIE IN SUPPORT OF MOTION OF TRUSTEE RICHARD A. MARSHACK FOR ENTRY OF AN ORDER (A) APPROVING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS PURSUANT TO 11 U.S.C. § 363(b) AND (B) APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND OTHER AGREEMENTS**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On July 20, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On July 20, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on July 20, 2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**JUDGE'S COPY**

The Honorable Scott C. Clarkson  
United States Bankruptcy Court  
Central District of California  
Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5130 / Courtroom 5C  
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 20, 2023  
Date

Caron Burke  
Printed Name

/s/ Caron Burke  
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Eric Bensamochan on behalf of Creditor Affirma, LLC  
eric@eblawfirm.us, G63723@notify.cincompass.com

Eric Bensamochan on behalf of Creditor Oxford Knox, LLC  
eric@eblawfirm.us, G63723@notify.cincompass.com

Eric Bensamochan on behalf of Interested Party Courtesy NEF  
eric@eblawfirm.us, G63723@notify.cincompass.com

Eric Bensamochan on behalf of Interested Party Eric Bensamochan  
eric@eblawfirm.us, G63723@notify.cincompass.com

Ronald K Brown on behalf of Creditor SDCO Tustin Executive Center, Inc.  
ron@rkbrownlaw.com

Christopher Celentino on behalf of Plaintiff Richard A. Marshack  
christopher.celentino@dinsmore.com, caron.burke@dinsmore.com

Christopher Celentino on behalf of Trustee Richard A Marshack (TR)  
christopher.celentino@dinsmore.com, caron.burke@dinsmore.com

Michael F Chekian on behalf of Interested Party Michael Chekian  
mike@cheklaw.com, chekianmr84018@notify.bestcase.com

Shawn M Christianson on behalf of Interested Party Courtesy NEF  
cmcintire@buchalter.com, schristianson@buchalter.com

Randall Baldwin Clark on behalf of Interested Party Randall Baldwin Clark  
rbc@randallbclark.com

Leslie A Cohen on behalf of Interested Party Courtesy NEF  
leslie@lesliecohenlaw.com, jaime@lesliecohenlaw.com;clare@lesliecohenlaw.com

Jenny L Doling on behalf of Interested Party INTERESTED PARTY  
jd@jdl.law, dolingjr92080@notify.bestcase.com;15994@notices.nextchapterbk.com

Jenny L Doling on behalf of Interested Party National Association of Consumer Bankruptcy Attorneys  
jd@jdl.law, dolingjr92080@notify.bestcase.com;15994@notices.nextchapterbk.com

Jenny L Doling on behalf of Interested Party National Consumer Bankruptcy Rights Center  
jd@jdl.law, dolingjr92080@notify.bestcase.com;15994@notices.nextchapterbk.com

Daniel A Edelman on behalf of Creditor Carolyn Beech  
dedelman@edcombs.com, courtecl@edcombs.com

Christopher Ghio on behalf of Plaintiff Richard A. Marshack  
christopher.ghio@dinsmore.com, Kristina.Heller@Dinsmore.com

Christopher Ghio on behalf of Trustee Richard A Marshack (TR)  
christopher.ghio@dinsmore.com, Kristina.Heller@Dinsmore.com

Jeffrey I Golden on behalf of Creditor Anaheim Arena Management, LLC

jgolden@go2.law,  
kadele@ecf.courtdrive.com;cbmeeker@gmail.com;lbracken@wglp.com;gestrada@wglp.com;golden.jeff  
reyi.b117954@notify.bestcase.com

Jeffrey I Golden on behalf of Creditor Anaheim Ducks Hockey Club, LLC  
jgolden@go2.law,  
kadele@ecf.courtdrive.com;cbmeeker@gmail.com;lbracken@wglp.com;gestrada@wglp.com;golden.jeff  
reyi.b117954@notify.bestcase.com

Jeffrey I Golden on behalf of Interested Party Courtesy NEF  
jgolden@go2.law,  
kadele@ecf.courtdrive.com;cbmeeker@gmail.com;lbracken@wglp.com;gestrada@wglp.com;golden.jeff  
reyi.b117954@notify.bestcase.com

Richard H Golubow on behalf of Creditor Debt Validation Fund II, LLC  
rgolubow@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com

Richard H Golubow on behalf of Creditor MC DVI Fund 1, LLC  
rgolubow@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com

Richard H Golubow on behalf of Creditor MC DVI Fund 2, LLC  
rgolubow@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com

D Edward Hays on behalf of Interested Party Courtesy NEF  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@  
ecf.courtdrive.com

D Edward Hays on behalf of Trustee Richard A Marshack (TR)  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@  
ecf.courtdrive.com

Alan Craig Hochheiser on behalf of Creditor City Capital NY  
ahochheiser@mauricewutscher.com, arodriguez@mauricewutscher.com

Garrick A Hollander on behalf of Creditor Debt Validation Fund II, LLC  
ghollander@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com

Garrick A Hollander on behalf of Creditor MC DVI Fund 1, LLC  
ghollander@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com

Garrick A Hollander on behalf of Creditor MC DVI Fund 2, LLC  
ghollander@wghlawyers.com, jmartinez@wghlawyers.com;svillegas@wghlawyers.com

Razmig Izakelian on behalf of Creditor OHP-CDR, LP  
razmigizakelian@quinnemanuel.com

Joon M Khang on behalf of Debtor The Litigation Practice Group P.C.  
joon@khanglaw.com

Ira David Kharasch on behalf of Interested Party Ad Hoc Consumer Claimants Committee  
ikharasch@pszjlw.com

Ira David Kharasch on behalf of Interested Party Courtesy NEF

ikharasch@pszjlaw.com

Meredith King on behalf of Interested Party Courtesy NEF  
mking@fsl.law, ssanchez@fsl.law;jwilson@fsl.law

Nicholas A Koffroth on behalf of Creditor Committee Committee of Unsecured Creditors  
nkoffroth@foxrothschild.com, khoang@foxrothschild.com

David S Kupetz on behalf of Defendant Marich Bein, LLC  
David.Kupetz@lockelord.com, mylene.ruiz@lockelord.com

David S Kupetz on behalf of Interested Party Courtesy NEF  
David.Kupetz@lockelord.com, mylene.ruiz@lockelord.com

Christopher J Langley on behalf of Interested Party Courtesy NEF  
chris@slclawoffice.com,  
omar@slclawoffice.com;langleycr75251@notify.bestcase.com;ecf123@casedriver.com

Daniel A Lev on behalf of Interested Party Consumer Legal Group, P.C.  
daniel.lev@gmlaw.com, cheryl.caldwell@gmlaw.com;dlev@ecf.courtdrive.com

Daniel A Lev on behalf of Interested Party Courtesy NEF  
daniel.lev@gmlaw.com, cheryl.caldwell@gmlaw.com;dlev@ecf.courtdrive.com

Daniel A Lev on behalf of Interested Party Liberty Acquisitions Group Inc.  
daniel.lev@gmlaw.com, cheryl.caldwell@gmlaw.com;dlev@ecf.courtdrive.com

Michael D Lieberman on behalf of Creditor Phillip A. Greenblatt, PLLC  
mlieberman@lipsonneilson.com

Yosina M Lissebeck on behalf of Trustee Richard A Marshack (TR)  
Yosina.Lissebeck@Dinsmore.com, caron.burke@dinsmore.com

Richard A Marshack (TR)  
pkraus@marshackhays.com, rmarshack@iq7technology.com;ecf.alert+Marshack@titlexi.com

Laila Masud on behalf of Interested Party Courtesy NEF  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Laila Masud on behalf of Interested Party Richard A. Marshack  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Laila Masud on behalf of Plaintiff Richard Marshack  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Laila Masud on behalf of Trustee Richard A Marshack (TR)  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Kenneth Miskin on behalf of U.S. Trustee United States Trustee (SA)  
Kenneth.M.Miskin@usdoj.gov

Byron Z Moldo on behalf of Interested Party Byron Moldo  
bmoldo@ecjlaw.com, amatsuoka@ecjlaw.com,dperez@ecjlaw.com

Alan I Nahmias on behalf of Interested Party Courtesy NEF

anahmias@mbn.law, jdale@mbnlawyers.com

Victoria Newmark on behalf of Interested Party Courtesy NEF  
vnewmark@pszjlaw.com

Queenie K Ng on behalf of U.S. Trustee United States Trustee (SA)  
queenie.k.ng@usdoj.gov

Keith C Owens on behalf of Creditor Committee Committee of Unsecured Creditors  
kowens@foxrothschild.com, khoang@foxrothschild.com

Teri T Pham on behalf of Attorney Teri Pham  
tpham@epglawyers.com, tpassistant@epglawyers.com

Douglas A Plazak on behalf of Defendant Greyson Law Center PC  
dplazak@rhlaw.com

Douglas A Plazak on behalf of Defendant Han Trinh  
dplazak@rhlaw.com

Douglas A Plazak on behalf of Defendant Jayde Trinh  
dplazak@rhlaw.com

Douglas A Plazak on behalf of Defendant Scott James Eadie  
dplazak@rhlaw.com

Ronald N Richards on behalf of Defendant Consumer Legal Group, PC  
ron@ronaldrichards.com, 7206828420@filings.docketbird.com

Ronald N Richards on behalf of Interested Party Courtesy NEF  
ron@ronaldrichards.com, 7206828420@filings.docketbird.com

Gregory M Salvato on behalf of Creditor Mari Agape  
gsalvato@salvatoboufadel.com,  
calendar@salvatolawoffices.com;jboufadel@salvatoboufadel.com;gsalvato@ecf.inforuptcy.com

Gregory M Salvato on behalf of Interested Party Courtesy NEF  
gsalvato@salvatoboufadel.com,  
calendar@salvatolawoffices.com;jboufadel@salvatoboufadel.com;gsalvato@ecf.inforuptcy.com

Olivia Scott on behalf of Creditor Azzure Capital LLC  
olivia.scott3@bclplaw.com

Olivia Scott on behalf of Creditor Hi Bar Capital LLC  
olivia.scott3@bclplaw.com

Jonathan Serrano on behalf of Plaintiff Richard A. Marshack  
jonathan.serrano@dinsmore.com

Jonathan Serrano on behalf of Trustee Richard A Marshack (TR)  
jonathan.serrano@dinsmore.com

Paul R Shankman on behalf of Attorney Paul R. Shankman  
PShankman@fortislaw.com, info@fortislaw.com



Paul R Shankman on behalf of Creditor United Partnerships, LLC  
PShankman@fortislaw.com, info@fortislaw.com

Leslie Skorheim on behalf of U.S. Trustee United States Trustee (SA)  
leslie.skorheim@usdoj.gov

Howard Steinberg on behalf of Defendant BankUnited, N.A.  
steinbergh@gtlaw.com, pearsallt@gtlaw.com;howard-steinberg-6096@ecf.pacerpro.com

Andrew Still on behalf of Creditor Alteryx, Inc.  
astill@swlaw.com, kcollins@swlaw.com

Andrew Still on behalf of Interested Party Courtesy NEF  
astill@swlaw.com, kcollins@swlaw.com

United States Trustee (SA)  
ustpregion16.sa.ecf@usdoj.gov

Sharon Z. Weiss on behalf of Creditor Azzure Capital LLC  
sharon.weiss@bclplaw.com, raul.morales@bclplaw.com,REC\_KM\_ECF\_SMO@bclplaw.com

Sharon Z. Weiss on behalf of Creditor Hi Bar Capital LLC  
sharon.weiss@bclplaw.com, raul.morales@bclplaw.com,REC\_KM\_ECF\_SMO@bclplaw.com

Johnny White on behalf of Creditor Debt Relief Group, LLC  
JWhite@wrslawyers.com, jlee@wrslawyers.com

Johnny White on behalf of Interested Party Courtesy NEF  
JWhite@wrslawyers.com, jlee@wrslawyers.com